IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

MFA.No. 840 of 2000(A)

OPMV.2570/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR
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APPELLANTS/APPLICANTS:

1. C.P.RAPHAEL, AGED 41 YEARS,
S/O C.R.PAILY, CHEMMANCHERI HOUSE,
P.O.THIRUTHIPURAM, ERNAKULAM DIST.

2. GIFTY (MINOR) AGED 6 YEARS,
D/O RAPHAEL, DO. DO. BEING MINOR REP.
BY FATHER AND GUARDIAN C.P.RAPHAEL.

3. ANTHAPPAN, AGED 59 YEARS, S/O VAREED,
DO. DO.

4. ROSELY, AGED 49 YEARS, W/O ANTHAPPAN,
DO. DO.

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS/RESPONDENTS:

1. C.H.MOHAMMEDALI, S/O HASSANKUTTY,
CHAKKANDATHODI HOUSE, P.O.CHATTIPARAMBA,
MALAPPURAM DIST (OWNER OF BUS KRH 7077).

2. HARIKUMAR K.R., S/O RAMAN NAIR, KANNANKUZHIYIL
HOUSE, KALLAYAKUDI P.O., KARRAPPARA D.L.NO.
124/90 (DRIVER OF BUS KRH 7077).

3. UNITED INDIA INSURANCE CO. LTD. UP HILL,
MALAPPURAM P.O. POLICY NO.101001/31/40/1/12575/90
IC NO.101001/31/40/6/177540/96, VALID UPTO 24.3.1997
INSURER OF BUS KRH 7077.

R3 BY ADV. SRI.A.R.GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 840 of 2000

JUDGMENT

Koshy, J.

A 26 year old school teacher died in a motor accident. Her husband, young child aged 2 ½ years, father and mother claimed compensation amounting to Rupees ten lakhs. The Tribunal held that the accident occurred due to the negligence of the second respondent driver of the vehicle owned by the first respondent. At the relevant time, the above vehicle was covered by a valid insurance policy issued by the third respondent Insurance Company. However, the total compensation awarded was only Rs.2,75,000/-. The quantum of compensation alone is challenged in this appeal.

2. It is submitted by the counsel for the appellant that the appellant, who was a school teacher, was getting salary from the Government. At the time of the accident, her salary was Rs.2,738/-

as proved by Exhibit A4 salary certificate. Since she was getting Government pay, it was further argued that every year there would be increment and there would be periodical pay revision and if she had continued in employment, in 1999, her salary would have been Rs.5,414/- as per Exhibit A4 Certificate and now, it would have been much higher. It has been held by the Supreme Court in **K.S.R.T.C. v. Susamma Thomas** (1994 (1) KLT 67 (SC)) that while taking the monthly income, future prospects also should be taken into account. However, the Tribunal accepted the salary at Rs.2,738/-, but taking into the fact that they are living in a rented house, rent was deducted and total dependency income was calculated at Rs.1,200/- per month. Her husband was employed. Even if, from her salary the rent is being paid, the family would have got that facility till the end of her life. It is true that vagaries of life cannot be predicted. The future prospects she might

get in an ordinary course also cannot be forgotten. Further, for calculation of salary, the amount could have been fixed at least at Rs.2,700/- as at the time of the accident, her salary was Rs.2,738/-. After deducting one third the compensation for loss of dependency will be Rs.1,800/- per month. The Tribunal has taken 18 as the multiplier, taking the guidance on the second schedule. Even otherwise, she had twenty nine more years of service. After retirement also she would have got pension based on the last pay drawn salary and she would be getting income by taking tuitions etc.

4. However, we are of the opinion that 18 taken as the multiplier needs no further increase. It is true that her child was only 2 ½ years old and she was carrying also at the time of the accident. Taking 18 as the multiplier, as adopted by the Tribunal, the total compensation payable for loss of dependency will be Rs.3,88,800/-. The Tribunal

has given only Rs.2,59,200/- for loss of dependency. So, the balance will be 1,29,600/-. Even though it was contended that for loss of foetus compensation should be awarded, we are of the opinion that it is not necessary. Apart from the above, we note that the 2 ½ year old child lost mother's care, love and affection and no amount was paid on that count. We are of the opinion that at least Rupees five thousand should be awarded on that count. therefore, the additional compensation payable will be Rs.1,34,600/-. It is submitted by the learned counsel for the appellant that the amount awarded on other heads are also very meagre. For funeral the body had to transported from Malappuram District to Thuruthipuram in Erankulam District. For funeral and transportation expenses, a higher amount should have been allowed. But, in view of the fact that a huge amount is given as compensation, no further enhancement need be made for other heads.

5. In the result, the third respondent Insurance Company is directed to deposit Rs.1,34,600/- over and above the compensation awarded by the Tribunal with interest at 7% per annum from the date of application till its deposit. On deposit, appellants 3 and 4 are allowed to withdraw Rs.14,600/- by executing a common receipt and Rs.20,000/- can be withdrawn by the first appellant/husband of the deceased. The balance amount should be deposited in the name of the second appellant, daughter of the deceased and that is allowed to be withdrawn by her at the time of her marriage.

The appeal is allowed in part.

(J.B.Koshy, Judge)

7th June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.840 of 2000

JUDGMENT

7th June, 2007